

U.S. DISTRICT COURT
DISTRICT OF MAINE
PORTLAND
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

2021 OCT 18 P 1:18

U.S. Bank National Association, as trustee
On behalf of the holders of the Asset
Backed Securities Corporation Home
Equity Loan Trust, Series NC 2005-HE8,
Asset backed Pass-Thru Certificates,
Series NC-2005-HE8

Civil Action No.: DEPUTY CLERK
2:21-cv-00208-JAW

Plaintiff(s)

v.

Eric Richmond a/k/a Eric H. Richmond
And CitiMortgage, Inc., f/k/a Citicorp
Mortgage

DEFENDANT'S MOTION FOR RELIEF
FROM JUDGMENT PURSUANT TO
FEDERAL RULES OF CIVIL
PROCEDURE 59(e)

Defendant(s)

NOW COMES Defendant, Eric Richmond, hereby moving, pursuant to Fed. R. Civ. P. 59(e), for relief from judgment of the order mailed October 6, 2021 that converted motion to strike portions of the Complaint to a motion to dismiss the Complaint .

As grounds therefore, Defendant states the following:

1. Plaintiff Complaint was filed on July 30, 2021.
2. Personal service on Defendant effectuated on September 13, 2021.
3. Defendant served motion to strike portions of the Complaint papers and notice of *pro se* appearance on all other parties on October 4, 2021, by certified mail.
4. Defendant sent the same motion to strike papers and notice of *pro se* appearance to Clerk of the Court on October 4, 2021, by certified mail.
5. The court, *sua sponte*, and without notice to any party, converted the motion to strike portions of the Complaint to a motion to dismiss the Complaint.

6. A motion to strike is a waivable right, which, successful or not, can be followed by another waivable right, a pre-answer motion to dismiss for any or all of a host of reasons, which, if not successful, can be followed by another waivable right, to serve an answer to the complaint.

7. The *sua sponte*, and without notice to any party, conversion of motion to strike limited Movant's right to all pre-answer motion to strike arguments.

8. This motion, served on all other parties and mailed to the Clerk of the Court on Saturday, Oct. 16, 2021, is within 10 days of the Oct. 6, 2021 mailing of the order and that, since the 10th day falls on a Saturday, is timely even if served as late as Monday Oct. 18, 2021, and, as order was mailed, would be timely if served by Oct. 19, 2021.

9. Rule 59(e) motions within 10 days of the decision are to be evaluated on a manifest injustice standard.

10. Eliminating an unwaived right, *sua sponte*, on no notice to any party is clearly a manifest injustice to the Defendant.

11. The court should not have eliminated an unwaived right, *sua sponte*, on no notice to any party.

WHEREFORE, Defendant respectfully requests that this Honorable Court correct a manifest injustice of eliminating an unwaived right, *sua sponte* and on no notice to any party, and reinstate the Defendant's motion to strike portions of the Complaint.

Signature : Eric Richmond
Eric Richmond, Defendant
5 Elmwood Drive
Saco, Maine 04072
(646) 256-9613
gowanusx@gmail.com

Date: October 16, 2021